IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-281

MARCUS A. ARNHEITER,

Petitioner,

—against—

NEIL SHEEHAN, RANDOM HOUSE, INC., and NATIONAL BROADCASTING COMPANY, INC.,

Respondents.

MARCUS A. ARNHEITER,

Petitioner,

—against—

DELL PUBLISHING CO. INC., NEIL SHEEHAN, and RANDOM HOUSE, INC.,

Respondents.

DONALD G. BROWNLOW,

Petitioner,

—against—

RCA CORPORATION, NATIONAL BROADCASTING COMPANY, INC., RANDOM HOUSE, INC., DOUBLEDAY & COMPANY, INC., DELL PUBLISHING CO. INC., RARITAN ENTERPRISES, INC., JOHNNY CARSON and NEIL SHEEHAN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

CARLETON G. ELDRIDGE, JR.
JOSEPH A. MCMANUS
COUDERT BROTHERS
Attorneys for Respondents Neil Sheehan, Random House, Inc., National Broadcasting Company, Inc., Dell Publishing Co. Inc., RCA Corporation, and Raritan Enterprises, Inc.
200 Park Avenue
New York, New York 10017

PAMELA G. OSTRAGER
SUSAN B. ROTHSCHILD
Of Counsel

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This consolidated Petition brings to the attention of the Court decisions reached below in three separate actions, namely two libel actions entitled respectively Arnheiter v. Neil Sheehan, et al., 72 Civ. 2601 (S.D.N.Y. 1972), and Arnheiter V. Dell Publishing Co., Inc., et al. 73 Civ. 2742 (S.D.N.Y. 1973) (hereinafter "the Arnheiter actions"), and an antitrust action entitled Brownlow v. RCA Corporation, et al., 78 Civ. 2668 (S.D.N.Y. 1978) (hereinafter "the Brownlow action"). To the extent that the arguments in opposition to the Petition by respondents in these three actions are the same, such arguments will be presented collectively. However, to the extent that the Petition raises separate considerations in regard to the Arnheiter actions and the Brownlow action, these considerations will be addressed individually by respondents.

OPINIONS BELOW

A. The Arnheiter Actions

The opinions of the United States Court of Appeals for the Second Circuit are unreported;

copies of the opinions are reproduced at B-18 and C-20 of the Appendix to the Petition. The United States District Court for the Southern District of New York did not render a written opinion in these actions but issued its ruling in open court. Although the Petition purports to include the transcript of the District Court's ruling in the Appendix thereto (A-1 to A[i], 17), only portions of the transcript have been included.

B. The Brownlow Action

The opinion of the United States Court of Appeals for the Second Circuit is also unreported; a copy of this opinion is reproduced at E-27 of the Appendix to the Petition. The opinion of the United States District Court for the Southern District of New York, also unreported, is reproduced at D-22 of the Appendix.

JURISDICTION

Judgments in the three actions which are the basis for the Petition were entered by the Second Circuit on May 18, 1979. While the

Petition purports to invoke the jurisdiction of this Court under 28 U.S.C. § 1254(1), it was not filed with the Clerk of the Supreme Court until August 17, 1979, ninety-one days after entry of the judgment sought to be reviewed. In that Congress has provided in 28 U.S.C. § 2101(c) with regard to judgments in civil actions that a writ of certiorari shall be "applied for within ninety days after the entry of such judgment or decree," the Petition was not timely filed; and therefore, this Court is without jurisdiction to hear the Petition.

QUESTIONS PRESENTED

A. The Arnheiter Actions

The Petition presents as questions for the review of this court issues which have been consistently rejected by the lower courts as well as matters which are not justiciable in this Court. Such questions clearly do not present the "special and important reasons" which must be present for such review to be had according to Rule 19 of the Rules of this Court.

In this connection, should this Court not deny this Petition outright for lack of jurisdiction, the determinative question is as follows:

> Is petitioner, a public figure/public official, entitled to relief from this Court when, after four years of discovery, he did not meet his burden of proving that a paperback edition of a book, previously ruled to have been published in hardcover form without actual malice, was published with actual malice or that an interview of the author concerning the book was broadcast with actual malice?

B. The Brownlow Action

The Petition purports to present only one question for review in connection with this action, which question is as follows:

> "Whether a complaint alleging a conspiracy in violation of antitrust statute with overt act in furtherance thereof within limitations period, should be dismissed where leave to amend is pending and there has been no discovery as to other concealed overt acts unknown to petitioner at the commencement of action [sic]."

The conclusory statement which the Petition presents as the sole question for review by this Court in connection with the Brownlow action also clearly does not present the "special and important reasons" which must be present for such review to be had according to Rule 19 of the Rules of the Supreme Court. Indeed,

should this Court not deny this Petition outright for lack of jurisdiction, only one question need be reached on the merits to determine whether the Petition should be granted:

> Should this Court review a case in which none of the considerations set forth in Rule 19 of the Rules of the Supreme Court is present and in which both Courts below found that the complaint failed to allege the occurrence of an overt act in furtherance of the antitrust conspiracy therein alleged within the applicable limitations period set forth in 15 U.S.C. §15b?

CONSTITUTIONAL PROVISION INVOLVED

In connection with the Arnheiter actions, the First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

STATEMENT OF THE CASES

A. The Arnheiter Actions

In February 1972, respondent Random House, Inc. (hereinafter "Random House") published, in hardcover form, a book entitled The Arnheiter Affair (hereinafter "the book"), authored by respondent Neil Sheehan, concerning the events which occurred during the command of Marcus A. Arnheiter, petitioner in the Arnheiter actions, of the U.S.S. Vance, a Navy warship on patrol duty off the coast of Vietnam. On February 25, 1972, Arnheiter commenced an action in the United States District Court for the Northern District of California alleging, inter alia, libel by virtue of that publication (hereinafter the "hardcover action").

On April 11, 1972 Sheehan was interviewed on "The Tonight Show", a program aired over the facilities of respondent National Broadcasting Company, Inc. (hereinafter "NBC"), concerning the book; on June 20, 1972, Arnheiter commenced an action alleging libel by virtue of that broadcast (hereinafter the "broadcast action"). In February 1973,

respondent Dell Publishing Co. Inc. (hereinafter "Dell") published the paperback edition of the book under a license from Random House; on June 20, 1973, Arnheiter commenced an action alleging libel because of that publication (hereinafter the "paperback action"). The broadcast and paperback actions (but not the hardcover action) are the subject of this Petition together with the antitrust action brought by petitioner Donald G. Brownlow.

On October 31, 1975, the District Court for the Northern District of California granted Sheehan and Random House judgment dismissing the complaint in the hardcover action on the ground that Arnheiter had not, and could not with further discovery, meet his burden of proving that any portion of the book claimed to be false and defamatory was written or published with knowledge of any falsity or reckless disregard for the truth. That decision was affirmed by the Ninth Circuit on July 17, 1978. Arnheiter v. Random House, Inc., 578 F.2d 804. Arnheiter did not seek Certiorari from that decision until September, 1979, after the Northern District of California Court denied his motion to vacate its judgment.

Following the grant of judgment by the

Northern District of California in the hardcover action, respondents moved for judgment dismissing the complaint in the paperback and broadcast actions on the grounds of res judicata and collateral estoppel, asserting that they were entitled to this relief because, inter alia:

a. Arnheiter, acting through counsel, subscribed to a sworn statement:

   (i) Conforming the pleadings in the paperback action to those pending in the hardcover action, and

   (ii) Setting forth his libel claims thereby proving that there was a language equivalent in the paperback and hardcover actions for each section of the text of the broadcast claimed to be defamatory; and

b. Arnheiter had simultaneously conducted discovery in all three actions for over three and one-half years.

On March 16, 1978, the District Court denied the motion on the ground that Arnheiter should be given the opportunity to prove that subsequent to the time of publication of the hardcover edition of the book, respondents gained knowledge which would have caused the

paperback to have been published or the broadcast to have been made with actual malice.

On May 10, 1978, respondents made a second motion for summary judgment, on the ground that Arnheiter could not meet his burden of proving that the paperback edition of the book was published with actual malice or that the words spoken during "The Tonight Show" interview and broadcast by NBC were spoken or broadcast with actual malice. When that motion was sub judice, the Court called the parties to trial. However, upon the action coming on for trial on September 11, 1978, the Court determined that it was not persuaded that Arnheiter had sufficient evidence to defeat the May 10, 1978 motion for summary judgment and ruled that his counsel should have an opportunity to reveal orally to the Court what evidence would be presented at trial which would defeat summary judgment.

After hearing the statement of the evidence made by Arnheiter's counsel, respondents' statement in support of the entry of judgment on the basis of such evidentiary statement, and reargument by counsel for

Arnheiter, the Court reconsidered the motion for summary judgment and ruled that:

1. Arnheiter had not met his burden under New York Times Co. v. Sullivan, 376 U.S. 254 (1964) and its progeny of proving with convincing clarity that the April 11, 1972 interview of Neil Sheehan on "The Tonight Show" was broadcast with actual malice or that the paperback edition of the book was published with actual malice;

2. All of Arnheiter's claims of libel with respect to the book had been previously ruled nonactionable (Arnheiter v. Random House, Inc., et al., 578 F.2d 804 (9th Cir. 1978), and Arnheiter presented no proof that the April 11, 1972 interview of Sheehan with respect to the book was broadcast with actual malice or that the book was republished in paperback form with actual malice; and

3. Arnheiter had had sufficient discovery and opportunity to come forward with any fact which would defeat summary judgment.

Judgment was entered in both actions on October 2, 1978.

On May 16, 1979, the Second Circuit Court of Appeals entertained argument in the paperback and broadcast actions, as well as the Brownlow action. On May 18, 1978, the Court

issued opinions affirming the District Court's decision in both actions. In connection with the broadcast action, the Court ruled as follows:

> "Relying on principles of res judicata and collateral estoppel, we note that the Ninth Circuit has already judged the hardcover version of "The Arnheiter Affair" under the standard of actual malice enunciated in New York Times Co. v. Sullivan, 376 U.S. 254 (1964), and concluded that neither the author Neil Sheehan nor Random House, Inc. published the hardcover with knowledge of its falsity or with reckless disregard for the truth. Arnheiter v. Random House, Inc., 578 F.2d 804 (1978). Appelant has failed to come forward with proof that, subsequent to the publication of the hardcover version of the book, any of the appellees obtained knowledge that any statement in the book is false. Therefore, appellant has not met his burden under New York Times Co. v. Sullivan, supra, of providing clear and convincing proof that the April 11, 1972 interview of Neil Sheehan on "The Tonight Show" was broadcast with actual malice."

The Court's decision in the paperback action was virtually identical:

> "Relying on principles of res judicata and collateral estoppel, we note that the Ninth Circuit has already judged the hardcover version of "The Arnheiter Affair" under the standard of actual malice enunciated in New York Times Co.

v. Sullivan, 376 U.S. 254 (1964), and concluded that neither the author Neil Sheehan nor Random House, Inc. published the hardcover with knowledge of its falsity or with reckless disregard for the truth. Arnheiter v. Random House, Inc., 578 F.2d 804 (1978). Appellant has failed to come forward with proof that, subsequent to the publication of the hardcover version of the book, any of the appellees obtained knowledge that any statement in the book is false. Therefore, appellant has not met his burden under New York Times Co. v. Sullivan, supra, of providing clear and convincing proof that the paperback edition of the book was published with actual malice."

B. The Brownlow Action

Petitioner Donald G. Brownlow is the author of a manuscript entitled "The Albatross" which was completed by him in 1973; the subject of "The Albatross" is Mr. Arnheiter. On June 12, 1978, Brownlow commenced an antitrust action against those parties named as defendants in the Arnheiter actions, and in addition naming as defendants Doubleday & Company, Inc. (hereinafter "Doubleday"), corporate parent of Dell, RCA Corporation (hereinafter "RCA"), the corporate parent of

NBC and Random House, Johnny Carson, host of "The Tonight Show", and Raritan Enterprises Inc. (hereinafter "Raritan"). *

The factual allegations upon which Brownlow based his antitrust claims, as determined by the District Court in its opinion dated November 6, 1978, are as follows:

> "Reading the complaint in the light most favorable to the plaintiff, the Court finds that it alleges the following:
>
> 1. Sometime in 1971, defendant Sheehan completed "The Arnheiter Affair," an account of Marcus Arnheiter's command of the U.S.S. Vance, a command from which the Navy abruptly relieved Arnheiter after 99 days.
>
> 2. From 1971 through 1973, defendants Dell Publishing Co., Inc., Doubleday & Co., Inc., Random House, Inc., and RCA Corporation ['the publishing defendants'] published 'The Arnheiter Affair,' promoting it as a factual analog of Herman Wouk's classic, 'The Caine

*Raritan, which had previously produced "The Tonight Show", is no longer in existence having been merged into NBC on April 11, 1975.

Mutiny,' publication rights of which are licensed to Dell and Doubleday.

3. In April 1972, defendants Johnny Carson, Raritan Enterprises, Inc., and National Broadcasting Co., Inc. ['the broadcasting defendants'] produced and broadcasted a segment of 'The Tonight Show' during which Sheehan appeared as a guest and discussed in considerable detail 'The Arnheiter Affair.' Neither Sheehan nor any of the publishing defendants paid a fee for Sheehan's appearance to any of the broadcasting defendants.

4. Each of the defendants were to share in some way in the profits of 'The Arnheiter Affair.'

5. In 1973, plaintiff completed 'The Albatross,' an account of the same events, which, in many material aspects, differs from Sheehan's.

6. Sometime in 1973, Sheehan stated that plaintiff would be unable to find a publisher for 'The Albatross.'

7. None of the defendants have ever agreed to publish or promote 'The Albatross.'

8. None of the defendants have ever agreed to provide plaintiff free television broadcast time to promote 'The Albatross' "*

---

*Additionally, the complaint alleged that Dell had been acquired by Doubleday in 1976.

On or about August 15, 1978, respondents RCA, NBC, Random House and Raritan moved to dismiss the complaint under Rule 12 (b)(6) of the Federal Rules of Civil Procedure, in which motion the other respondents later joined. Respondents' motion to dismiss was based on the fact that the complaint made no allegations tending to show a conspiracy, or any action taken in concert by respondents which had any connection with Brownlow, or indeed, any injury suffered by him arising out of any act by respondents. Additionally, such complaint failed to offer any definition of the market respondents allegedly conspired to monopolize, other than "the publishing industry," and failed to allege any matter tending to show that respondents willfully acquired or maintained monopoly power in any market.

Further, those facts alleged by Brownlow in support of his price discrimination claim, i.e., Sheehan's appearance on "The Tonight Show," affirmatively demonstrated that no such claim existed in that an appearance on a television show is not a "commodity", and Brownlow was not a "purchaser" of such "commodity". Finally, respondents' motion to dismiss was also based on the fact that the factual allegations made in the complaint demonstrated that such action

was barred by the applicable statute of limitations, in that the complaint alleged no fact occurring within the limitations period other than the 1976 merger of Dell into Doubleday.

In opposing that part of respondents' motion to dismiss addressed to the statute of limitations, Brownlow appeared to rely primarily on the maintenance of two goverment actions, United States v. National Broadcasting Company, Inc., Civ. No. 74-3601 - RJK (C.D. Calif. 1974) which challenged NBC's prime time television entertainment programming practices, and that of United States v. CBS, Inc., 78 Civ. 2491 (S.D.N.Y. 1978) which challenged the acquisition by CBS (not a defendant in any of the actions which are the subject of this Petition) of Fawcett Publications, Inc. as in some manner tolling the running of the limitations period under 15 U.S.C. §16(i). In granting such motion on November 6, 1978, the District Court, while not expressly ruling on the question of whether Brownlow had properly pleaded a cause of action under the antitrust laws, based its decision on the following grounds:

> "In support of his complaint, the plaintiff advances essentially only one legal theory: that the defendants' conduct amounts to a conspiracy to violate the antitrust laws. Even if the Court were to accept this theory, however, the plaintiff's claim would be barred by the four-year statute of limitations prescribed by 15 U.S.C. §15b. The complaint, filed in this Court on June 12, 1978, fails to allege a single overt act that occurred after June 12, 1974, in furtherance of the alleged conspiracy. 'A "right of action for a civil conspiracy under the antitrust laws accrues from the commission of the last overt act causing injury or damage.'" Peto v. Madison Square Garden Corp., 384 F.2d 682, 683 (2d Cir. 1967), cert. denied, 390 U.S. 989 (1968) (quoting Garelick v. Goerlich's, Inc., 323 F.2d 854, 855 (6th Cir. 1963)). Furthermore, the Court rejects plaintiff's assertion that the statute of limitations was tolled during the pendency of two actions brought by the United States, since the Court finds neither of these actions materially related to the instant complaint. See 15 U.S.C. 16(b); Peto, supra. See generally Leh v. General Petroleum Corp., 382 U.S. 54 (1965)."

Thereafter, judgment was entered dismissing the complaint on November 29, 1978, following which Brownlow filed his Notice of Appeal on December 4, 1978. During the course of such appeal, he advanced for the first time the argument that the 1976 merger of Dell into Doubleday was accomplished pursuant to the

conspiracy alleged in his complaint to promote Sheehan's book (published in 1972) and to suppress his book.

Oral argument on Browlow's appeal was heard by the Court of Appeals for the Second Circuit on May 16, 1979 at the same time as the appeal in the Arnheiter actions was heard; and on May 18, 1979, judgment was entered by the Court of Appeals, affirming the decision of the District Court on the grounds that:

> "Appellant's claim that defendants conspired to violate the antitrust laws is barred by the four-year statute of limitations under 15 U.S.C. §15b. The complaint, filed in the district court on June 12, 1978, failed to allege that a single overt act in furtherance of appellees' purported conspiracy occurred after June 12, 1974. The allegation in the complaint that, effective June 1, 1976, appellee Dell Publishing Co., Inc. became a wholly owned subsidiary of appellee Doubleday & Co. in furtherance of the conspiracy does not remove the case from the statute of limitations. Appellant could in no way be injured by a combination between Dell and Doubleday to promote Neil Sheehan's book, 'The Arnheiter Affair.'"

ARGUMENT

I. The Petition was not filed within the time limitation prescribed by Congress in 28 U.S.C. §2101(c); therefore, this Petition must be denied for want of jurisdiction.

The time limitation applicable to the filing of the instant Petition is that set forth in 28 U.S.C. §2101(c), which section reads in relevant part as follows:

> "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree.*

Thus, as this Petition was not filed until August 17, 1979, some ninety-one days after entry of the judgment for which review is sought, it was not timely filed. In such circumstances, this

*While such statute also states that an extension of time in which to apply for a writ of certiorari may be granted "for good cause shown," Rule 34(2) of the Supreme Court Rules requires that any request for such an extension must be filed within the period sought to be extended. Plaintiff did not apply for an extension until well after the time to do so had expired.

Court "has uniformly treated these statutory limitations as jurisdictional and the untimely petition in a civil case accordingly 'must ... be denied for want of jurisdiction,'" R.L. Stern, Supreme Court Practice ¶6.1 at 389 (5th ed. 1978), citing Department of Banking v. Pink, 317 U.S. 264, 268 (1942) and Citizens Bank v. Opperman, 249 U.S. 448, 450 (1919).

As is also set forth in the foregoing text, the jurisdictional requirement of timely filing "is strictly applied in civil cases ...; no matter how extenuating the circumstances, an untimely petition will not be entertained," R.L. Stern, supra. Thus in Deal v. Cincinnati Board of Education, 402 U.S. 962, 964 (1971), this Court denied a petition filed just one day late, even though the delay was apparently caused by the loss by an airline of the petitioner's papers. Similarly, in Teague v. Commissioner of Customs, 394 U.S. 977 (1969) certiorari was denied in the case of petition filed two days late because of an unusually severe snow storn.

Petitioners herein have alleged no reason in the nature of an Act of God or some other event beyond their control to excuse their failure to timely file. Clearly, this Petition must be denied for want of jurisdiction.

II. The decisions reached by the courts below in the Arnheiter actions are not in conflict with the recent decisions of this Court cited in the Petition.

The Court below ruled in the Arnheiter actions that his complaints with respect to the dissemination of facts and opinions contained in the book were barred by the principles of res judicata and collateral estoppel, and that he had failed to present any evidence that republication of those facts and opinions in the paperback edition of the book or broadcast concerning that book had been done with actual malice. These rulings were made after Arnheiter had engaged in extensive and wide-sweeping discovery for four years.

Accordingly, there is no reason for this Court to grant Arnheiter a writ of certiorari. The contention made in the Petition that this Court's decisions in Hutchinson v. Proxmire, 47 U.S.L.W. 4827 (U.S. June 26, 1979), Wolston v. Reader's Digest Assoc., 47 U.S.L.W. 4840 (U.S. June 26, 1979), and Herbert v. Lando, _U.S._, 60 L.Ed. 115, 99 S.Ct. 1635 (1979), are in conflict with the Second Circuit's rulings is specious.

In both Wolston and Hutchinson, this Court reversed findings of "public figure" status on the ground that the plaintiff had not thrust

himself or his views into a public controversy. Here, the Ninth Circuit ruled that Arnheiter had "used every conceivable effort to gain public exposure and to make his case [the subject of the book] a 'cause celebre.' He successfully courted massive publicity ...," Arnheiter v. Random House, Inc., supra, 578 F.2d at 805. Moreover, the Ninth Circuit ruled that he was a public official:

> "The commmanding officer of a United States Navy vessel during war is in control of governmental activity of the most sensitive nature. Such a person holds a position that invites public scrutiny and discussion (Rosenblatt [v. Baer, 383 U.S. 75, 85, 86, n.13 (1966)] and fits the description of a public official under New York Times." Id.

Even if these cases were applicable, Arnheiter never sought review of the decision of the Ninth Circuit in this Court. Thus, the question of Arnheiter's status for purposes of determining his burden of proof was final when the Second Circuit rendered its decisions. Therefore, he is barred by the doctrine of res judicata from using this proceeding as a device to mount a collateral attack on that judgment. IB Moore, Federal Practice, $0.401 at 11-12; $0.405 at 628 (1974). Moreover, Wolston and

Hutchinson are clearly not cases which should be accorded retroactive effect. See Linkletter v. Walker, 381 U.S. 618, 629 (1965).

In any event, petitioner conceded his status in the Second Circuit and cannot be heard to complain now; as the Ninth Circuit Court of Appeals ruled, Arnheiter "qualifies under both the public official and public figure tests and ... the book must be judged against the New York Times standard of actual malice." Arnheiter v. Random House, Inc., supra, 578 F.2d at 805.

With respect to whether petitioner had sufficient discovery, in Herbert v. Lando, this Court rejected the respondent's claim that the First Amendment precluded inquiry into the editional process. This issue was never raised by Arnheiter in either the hardcover, paperback, or broadcast actions. Moreover, Arnheiter has invoked a need for discovery each time it appeared that an action would be terminated.

On the eve of summary judgment in the Northern District of California, Arnheiter filed a motion to stay summary judgment and permit further discovery. That Court ruled:

> "[Arnheiter] has not met and could not, with further discovery, meet the burden placed upon him [by New York Times Co. v. Sullivan]." Arnheiter v. Random House, Inc., Slip op. No. C-72-342 S.W. (N.D. Cal. 1975).

And the Ninth Circuit affirmed:

> "This case was over 3 years old when the summary judgment motion was heard, and a review of the records shows that appellant deposed both appellees and demanded and received Sheehan's research materials. There was no abuse of discretion in not permitting additional discovery." Arnheiter v. Random House, Inc., supra, 578 F.2d at 806.

Yet, Arnheiter continued discovery subsequent to the entry of judgment in the Northern District. On December 29, 1976, a United States Magistrate in the Southern District stated:

> Plaintiff has had extensive discovery respecting all three actions "and defendants have" properly cooperated with the plaintiff's discovery.

Finally, the Southern District of New York ruled:

> As to the application for additional discovery, it is denied. These cases are over six years old.
>
> Moreover, the purpose of a lawsuit is to redress a wrong not to find one. Appendix to Petition, at A-12.

III. No "special and important reasons" exist to support review by this Court of the decisions reached below in the Brownlow action.

As is set forth in Rule 19 of the Rules of this Court, a "review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." In this connection, Rule 23(4) provides that the "failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

In utter disregard of the clear mandate issued by the Rules cited above, the Petition consists of nothing more than a rambling, incoherent replay of those grievances of Marcus Arnheiter which have led to a seemingly endless series of repetitive litigations, all ultimately

determined to be without merit. With particular reference to Brownlow's antitrust claims and the bar imposed on the maintenance of these claims by the applicable statute of limitations, i.e., 15 U.S.C. §15b, the Petition cites nothing to indicate a conflict in relevant decisions of our federal Courts of Appeals, or an important question of federal law not yet settled by this Court; nor does the Petition in any way indicate that the courts below decided a federal question contrary to any decision of this Court, or misused their discretionary power in any way, see, Rule 19.

Brownlow's arguments were fully considered by the Courts below, both of which ultimately determined that he had not set forth the occurrence within the limitations period of any overt act in furtherance of the conspiracy alleged in his complaint. No issue of any significance whatsoever is raised by the Petition herein, let alone one requiring the attention of this Court.

CONCLUSION

The Court being without jurisdiction to hear the Petition, and no issue of significance

or substance having been raised therein, the Petition for a Writ of Certiarari should be denied.

Respectfully submitted,

CARLETON G. ELDRIDGE, JR.
COUDERT BROTHERS
Attorneys for Respondents
Neil Sheehan, Random House, Inc., National Broadcasting Company, Inc., and Dell Publishing Co. Inc. in the Arnheiter actions
200 Park Avenue
New York, New York 10017

JOSEPH A. MCMANUS
COUDERT BROTHERS
Attorney for Respondents
RCA Corporation, National Broadcasting Company Inc., Random House, Inc., Raritan Enterprises, Inc., and Neil Sheehan in the Brownlow action
200 Park Avenue
New York, New York 10017

PAMELA G. OSTRAGER
SUSAN B. ROTHSCHILD
COUDERT BROTHERS
200 Park Avenue
New York New York 10017